

EXHIBIT 3

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IN THE CIRCUIT COURT OF COOK COUNTY,
ILLINOIS COUNTY DEPARTMENT, LAW DIVISION

RECEIVED
STATE OF ILLINOIS
JUN 04 2018
DEPT. OF INSURANCE
CHICAGO, ILLINOIS

ELK GROVE HOSPITALITY-EAST, LLC,)

Plaintiff,)

v.)

Case No.)

NATIONWIDE MUTUAL INSURANCE)
COMPANY AND AFFILIATED)
COMPANIES, DEPOSITORS INSURANCE)
COMPANY)

Defendant.)

COMPLAINT

Plaintiff, ELK GROVE HOSPITALITY-EAST, LLC, ("Plaintiff"), by its attorneys, Childress Loucks and Plunkett, Ltd., for its Complaint against Defendant, NATIONWIDE MUTUAL INSURANCE COMPANY AND AFFILIATED COMPANIES, DEPOSITORS INSURANCE COMPANY, ("Defendant"), state as follows:

NATURE OF THE ACTION

1. Plaintiff brings this action for breach of contract and relief under section 155 due to Defendant's failure to comply with the insurance policy it issued to Plaintiff and for its failure to pay insurance benefits for damages to Plaintiffs covered property.

PARTIES

2. At all times material herein, Plaintiff was and is the owner of the building located at 1104 W Devon Ave, Elk Grove Village, IL 60007 (hereinafter referred to as the "Insured Property").

3. At all times material herein, Defendant was and is an Iowa corporation. Defendant is authorized by the Illinois Department of Insurance to issue insurance policies to Illinois

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residents and is engaged in the business of underwriting and issuing property and casualty insurance policies in the State of Illinois.

JURISDICTION AND VENUE

4. This Court has jurisdiction over the present action under the Illinois Code of Civil Procedure 735 ILCS 5/2-209(a)(1) (2) (3) and (4), because at all times relevant to this Complaint, Defendant, either individually or through its agents, officers or representatives, transacted business in the State of Illinois relating to the allegations herein.

5. Venue is proper in Cook County under Section 5/2-101 of the Illinois Code of Civil Procedure because Plaintiff resides in this County, the Insured Property is located in Cook County, Defendant has transacted substantial business in Cook County, Illinois, and Cook County, Illinois is where the majority of transactions relating to the allegations herein occurred.

COUNT I
(Breach of Contract)

6. Defendant issued an insurance policy to Plaintiff for the Insured Property, Policy Number ACP BPOD 7102554376, effective from February 28, 2017 to February 28, 2018 (hereinafter referred to as "the Policy"). A copy of the Policy is attached hereto as Exhibit 1.

7. Pursuant to the terms of the Policy, Defendant agreed to pay for direct physical loss or damage to the Insured Property caused by or resulting from any covered cause of loss.

8. At all times relevant, Plaintiff paid premiums in a timely manner.

9. On or about July 21, 2017, while the Policy was in full force and effect, the Insured Property sustained direct physical loss or damage by hail and wind (the "Loss").

10. Loss from a hail or windstorm are not otherwise excluded or limited under the Policy and is therefore a covered cause of loss.

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11. Plaintiff duly submitted a claim, Number 685401-GF, to Defendant under the Policy for the Loss.

12. Defendant agreed that the claim for loss and damage to the Covered Property was covered under the Policy but has partially denied policy benefits claimed by Plaintiff. A copy of the September 25, 2017, claim decision letter is attached hereto as Exhibit 2.

13. Pursuant to the Policy, Defendant has a contractual obligation to fully investigate and adjust the Loss, and pay the full amount of covered losses, including the costs to repair and/or replace the damage, less applicable deductible.

14. Plaintiff has performed all conditions precedent to its right to recovery under the Policy.

15. Defendant is liable to Plaintiff for the full amount allowed by the Policy for the Loss.

16. Defendant refused and continues to refuse to pay for all of the benefits due under the Policy, including the full costs to repair and/or replace the hail and wind damage to the Insured Premises, forcing Plaintiff to litigate.

17. Defendant breached its Policy by:

- a. not promptly paying Plaintiff all benefits owed as a result of the covered Loss;
- b. failing to pay for all consequential damage; and
- c. not putting Plaintiff in the position it would have been in had Defendant timely performed all of its contractual duties.

18. As a direct and proximate result of Defendant's breach(es) of contract, Plaintiff:

- a. suffered and will continue to suffer property damage;
- b. incurred and will incur in the future costs to repair and/or replace the property damage;

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- c. suffered and will continue to suffer consequential damages;
- d. is entitled to an award of prejudgment interest, taxable costs, and investigatory fees; and
- e. incurred other expenses as a result of Defendant's breach of contract.

WHEREFORE, Plaintiff, Elk Grove Hospitality – East, LLC respectfully requests judgment in its favor against Defendant, Nationwide Mutual Insurance Company and Affiliated Companies, Depositors Insurance Company, for monetary damages exceeding \$50,000.00, including, but not limited to, property damage, pre-judgment interest, and all other damages and costs the Court deems appropriate.

COUNT II
(Section 155 Relief)

19. Plaintiff reasserts and re-alleges paragraphs 1-19 as paragraph 20 of Count II as though fully set forth herein.

20. At the time of the Loss, Defendant's internal policies, practices, and procedures included compliance with the regulations promulgated by the Illinois Director of Insurance within Part 919 of the Illinois Administrative code as well as compliance with section 154.5 and 154.6 of the Illinois Insurance Code.

21. Plaintiff is entitled to an award of taxable costs under section 155 by virtue of Defendant engaging in the following vexatious and unreasonable conduct:

- a) failing to pay Plaintiff under the Insurance Policy for the loss within 40 days of the loss, which constitutes an unreasonable delay in paying the claim as a matter of law, in violation of the regulations promulgated by the Illinois Director of Insurance within Section 919.80(d)(7)(A) of the Illinois Administrative Code;
- b) failing to provide Plaintiff with a reasonable written explanation in resolving the new claim after the claim remained unresolved for more than

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75 days, in violation of the regulations by the Illinois Director of Insurance within Section 919.80(d)(7)(B) of the Illinois Insurance Code;

- c) failing to provide Plaintiff with a reasonable written explanation for the delay in resolving its new claim, in violation of the regulations promulgated by the Illinois Director of Insurance within Section 919 of the Illinois Insurance Code;
- d) not attempting in good faith to effectuate a prompt, fair, and equitable settlement of its claims, claims in which the entire amount was reasonably clear, in violation of Section 154.6 of the Illinois Insurance Code and the regulations promulgated by the Illinois Director of Insurance within Section 919.50 of the Illinois Administrative Code;
- e) without proper cause, wrongfully and knowingly refusing to reimburse Plaintiff for the entire amount due and owing for its losses under the Insurance Policy;
- f) Providing Plaintiff with false and/or misleading information in an attempt to settle the Claim at a lower settlement amount;
- g) forcing Plaintiff to retain legal counsel to investigate its claims and to present this lawsuit to recover all of the benefits that should have been immediately forthcoming under the Insurance Policy; and
- h) refusing to pay for the entire amount of Plaintiff's losses due and owing under the Insurance Policy without conducting a full, fair and prompt investigation based on all available information, in violation of its internal claims policies, practices, and procedures and in violation of Section 154.6 of the Illinois Insurance Code.

WHEREFORE, Plaintiff, Elk Grove Hospitality – East, LLC respectfully prays for an award of taxable costs, including statutory damages, reasonable attorney fees, and costs in its favor and against Defendant, Nationwide Mutual Insurance Company and Affiliated Companies, Depositors Insurance Company.

Dated: May 23, 2018

L00120278009061218

Respectfully submitted,

CHILDRESS LOUCKS & PLUNKETT, LTD.



By: _____

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